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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,677	08/24/2001	Xiaomang Zhang	0717-0475P	3455
2292	7590	12/29/2005		EXAMINER
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			DANG, DUY M	
			ART UNIT	PAPER NUMBER
			2627	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/935,677	ZHANG, XIAOMANG	
	Examiner Duy M. Dang	<b>Art Unit</b> 2627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 October 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 21-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 21-39 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 October 2005 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

1. Applicant's amendment filed 10/5/05 has been entered and made of record. It is noticed that claim 1 has been amended and claims 21-39 are newly added claims. So pending claims are 1 and 21-39.

2. Applicant's amendment and arguments overcome the objection to drawings, and the rejection of claims 1 under section 35 USC 112, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 and 21-39 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of copending Application No. 09/935,738 (Referred as copending invention hereinafter). Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-18 of the

copending invention and claims 1 and 21-39 of the instant invention recite common subject matter. For example,

Claim 1 of the copending invention teaches the corresponding claimed features in instant claim 1 as a representative claim as follows:

a low frequency luminance signal generator generating a low frequency luminance signal based on the RGB image data [see “low-frequency luminance signal” mentioned in lines 6-9]; and

a middle-high range luminance component compensation section for compensating for a middle-high range luminance component of the low-frequency signal such that the low-frequency luminance signal has substantially an ideal frequency luminance characteristic which is lower than or equal to a predetermined frequency [see lines 4-9].

Regarding instant claim 39, claim 17 of the copending invention teaches the corresponding features recited in claim 39. It is noted that claim 17 of the copending invention if rewritten in independent form, would recite extraneous features that are not set forth in instant claim 39. However, the use of transitional term “comprising” in the instant claim 39 fails to preclude the possibility of additional elements.

Likewise, claims 2-18 teach the corresponding features as called for in instant claims 21-38.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Art Unit: 2627

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claim 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Applicant's admitted prior art as described in page 1 line 11 to page 18 line 5 and figures 13-21 [referred as the AAPA hereinafter].

Regarding claim 1, the AAPA teaches:

a low frequency luminance signal generator generating a low frequency luminance signal based on the RGB image data [see low pass filter 101 shown in figure 13]; and

a middle-high range luminance component compensation section for compensating for a middle-high range luminance component of the low-frequency signal such that the low-frequency luminance signal has substantially an ideal frequency luminance characteristic which is lower than or equal to a predetermined frequency [see the compensation mentioned in page 15 line 20 to page 16 line 7 and figure 21].

Regarding claim 39, the AAPA teaches:

generating a first luminance signal from RGB image data [see output of item 301 of figure 18];

generating a second luminance signal having a middle-high range luminance component from the RGB image data [see item 303a of figure 18];

correcting the second luminance signal by extracting a middle-high range luminance component from the first luminance signal and adding the extracted middle-high range luminance component to the second luminance signal [see item 303b of figure 18].

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duy M. Dang whose telephone number is 571-272-7389. The examiner can normally be reached on Monday to Friday from 6:00AM to 2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Mancuso can be reached on 571-272-7695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

dmd  
12/05



Duy M. Dang  
Patent Examiner